

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE AMBROCIO,

Defendant and Appellant.

B301111

(Los Angeles County
Super. Ct. No. BA474284)

THE COURT:

Defendant and appellant Jose Ambrocio (defendant) appeals his conviction of second degree burglary. His appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), raising no issues. On April 2, 2020, we notified defendant of his counsel's brief and gave him leave to file, within 30 days, his own brief or letter stating any grounds or argument he might wish to have considered. That time, which was extended 30 days by emergency order, has elapsed and defendant has submitted no brief or letter. We have reviewed the entire record and finding no arguable issues, affirm the judgment.

In a felony information defendant was charged with second degree burglary in violation of Penal Code section 459,¹ and with vandalism in violation of section 594. It was further alleged that defendant had suffered a prior serious or violent felony conviction subject to sentencing under section 667, subdivisions (b) through (j) and 1170.12 (the Three Strikes law). A jury found defendant guilty of burglary as charged and not guilty of vandalism. In a bifurcated trial the jury found the prior strike allegation to be true.

The trial court denied defendant's motion for new trial based upon a claim of prosecutorial misconduct during closing argument. The court also denied defendant's *Romero*² motion to strike his prior conviction. On August 27, 2019, the trial court sentenced defendant to a total of 32 months in prison. Presentence custody credits were calculated as 229 actual days plus 228 conduct credits, for a total of 457 days, and the court suspended fines and fees after finding an inability to pay. Defendant filed a timely notice of appeal from the judgment.

The evidence at trial showed that defendant and his girlfriend climbed to the roof of a shoe store, entered an attic space, and used a ladder to enter the store through a hole in the attic floor, triggering a silent alarm. Police were called and they observed defendant and a woman inside the store. Defendant put various merchandise in a bag and climbed back up the ladder to the attic, where he and his companion remained hidden for three

¹ All further statutory references are to the Penal Code, unless otherwise indicated.

² *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

hours. Meanwhile the police surrounded the store, brought in an airship, the canine unit, and the fire department (to deploy a special ladder to the roof), in addition to making PA announcements ordering defendant and his companion to come out. When defendant finally emerged onto the roof, he inched his way away from officers toward fire stairs, where an officer grabbed him and took him into custody.

Defendant testified that he and his girlfriend climbed to the roof and entered the attic area with the intent of having sex there. After that the girlfriend stepped on foam insulation and the floor gave way, creating a hole with a view into the store. Defendant claimed that he took a ladder from the attic and entered the store. Once inside, he decided to steal some merchandise. He claimed not to have heard the loudspeaker announcement ordering him to come out.

We have examined the entire record and are satisfied that defendant's appellate counsel has fully complied with his responsibilities and that no arguable issue exists. We conclude that defendant has, by virtue of counsel's compliance and our review of the record, received adequate and effective appellate review of the judgment entered against him in this case. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 123-124.)

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

LUI, P.J.

CHAVEZ, J.

HOFFSTADT, J.